S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 8, 2007
v	No. 266588 St. Clair Circuit Court
MICHAEL ANDRE MARTIN, Defendant-Appellant.	LC No. 05-000837-FH

Before: Servitto, P.J., and Talbot and Schuette, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction by a jury of carrying a concealed weapon (CCW), MCL 750.227. We affirm. We decide this appeal without oral argument under MCR 7.214(E).

I. FACTS

Defendant works as a long distance truck driver. On March 20, 2005, Jeff Boller, a motor carrier officer with the Michigan State Police, stopped and inspected defendant's vehicle after noticing that it had a cracked windshield. The officer discovered an outstanding warrant for defendant's arrest and took him into custody. Defendant's vehicle then had to be turned over to a towing company, so Officer Boller conducted an inventory of its contents. During his search of the cab, the officer found a double-edged nonfolding knife tucked under some clothes in the sleeping berth behind the driver's seat.

II. EFFECTIVE ASSISTANCE OF COUNSEL

Defendant first contends he was denied the effective assistance of counsel because his trial attorney failed to move to suppress an incriminating statement he made to the arresting officer regarding ownership of the knife.

A. Standard of Review

Effective assistance of counsel is presumed. The defendant must overcome a strong presumption that counsel's performance constituted sound trial strategy. *People v Rodgers*, 248 Mich App 702, 715; 645 NW2d 294 (2001). To establish ineffective assistance of counsel, the attorney's performance must have been "objectively unreasonable in light of prevailing

professional norms" and "but for the attorney's error or errors, a different outcome reasonably would have resulted." *People v Harmon*, 248 Mich App 522, 531; 640 NW2d 314 (2001).

B. Analysis

In *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999), our Supreme Court held that "the burden of establishing the factual predicate" for a claim of ineffective assistance of counsel falls on the defendant and described the burden as follows:

> A convicted person who attacks the adequacy of the representation he received at his trial must prove his claim. To the extent his claim depends on facts not of record, it is incumbent on him to make a testimonial record at the trial court level in connection with a motion for a new trial which evidentially supports his claim and which excludes hypotheses consistent with the view that his trial lawyer represented him adequately." [*Id.*, quoting *People v Ginther*, 390 Mich 436, 442-443; 212 NW2d 922 (1973).]

Where the record does not contain sufficient detail to support an ineffective assistance claim, the defendant waives the issue. *People v Davis*, 250 Mich App 357, 368; 649 NW2d 94 (2002).

In the instant case, the record shows that Officer Boller placed defendant in custody on an outstanding warrant before inventorying the items in his vehicle. After finding the knife in question, the officer showed it to defendant. This prompted defendant to state that he owned the knife. As defendant asserts on appeal, there is no evidence that Officer Boller advised defendant of his *Miranda*[1] rights following the traffic stop. But there is also no indication that the officer failed to give the warnings. The record provides no support for defendant's contention that Officer Boller elicited a statement from him in violation of *Miranda*. Defendant has therefore failed to establish the factual predicate for the claim that his trial attorney provided ineffective assistance by failing to move to suppress his statements to the officer. Consequently, we hold that defendant has waived the issue.

III. SUFFICIENCY OF THE EVIDENCE

Next, defendant contends that the prosecution did not present sufficient evidence for a rational jury to convict him of CCW. Specifically, he asserts that, because the knife was found in the cab of his truck along with clothing and a bed, the prosecution failed to prove beyond a reasonable doubt that the "place of business" exception in MCL 750.227(1) did not apply.

A. Standard of Review

[1] *Miranda v Arizona*, 384 U S 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

We review challenges to the sufficiency of the evidence de novo. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). Similarly, statutory interpretation presents a question of law subject to de novo review. *People v Davis*, 468 Mich 77, 79; 658 NW2d 800 (2003).

B. Analysis

A defendant is denied due process of law if convicted on the basis of less than legally sufficient evidence. See *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). The prosecution must introduce evidence sufficient to justify a rational trier of fact in concluding that the essential elements of the crime were proved beyond a reasonable doubt. *Id*. When reviewing a challenge to the sufficiency of the evidence, this Court must examine the evidence in the light most favorable to the prosecution. *Id*.

The statute in question, MCL 750.227(1), provides:

> A person shall not carry a dagger, dirk, stiletto, a double-edged nonfolding stabbing instrument of any length, or any other dangerous weapon, except a hunting knife adapted and carried as such, concealed on or about his or her person, or whether concealed or otherwise in any vehicle operated or occupied by the person, except in his or her dwelling house, place of business or on other land possessed by the person.

In the instant case, defendant argues that the plain meaning of the phrase "place of business" encompasses vehicles as well as structures affixed to land. He therefore asserts that the place of business exception should allow a truck driver who lives in the cab of his vehicle to carry weapons for protection against robbery. Defendant concedes that this interpretation of MCL 750.227(1) conflicts with *People v Wallin*, 172 Mich App 748; 432 NW2d 427 (1988). In *Wallin*, this Court found that "the words 'other land' indicate the legislative intent to limit the place of business exception to business property on land." *Id.* at 751. It therefore held that the trial court did not err in refusing to give a jury instruction regarding the "place of business exception" where the police found a weapon in the defendant's delivery van. *Id.* But defendant argues that *Wallin* was wrongly decided and is not binding on this Court under MCR 7.215(J)(1).[2]

Resolution of this issue requires that we interpret MCL 750.227(1). The goal of statutory construction is to ascertain and give effect to the Legislature's intent. *People v Weeder*, 469 Mich 493, 497; 674 NW2d 372 (2004). When the statutory language is clear and unambiguous,

[2] MCR 7.215(J)(1) provides:

> A panel of the Court of Appeals must follow the rule of law established by a prior published decision of the Court of Appeals issued on or after November 1, 1990, that has not been reversed or modified by the Supreme Court, or by a special panel of the Court of Appeals as provided in this rule.

the court must apply the statute as written, and judicial construction is neither required nor permitted. *Id.* Further, as our Supreme Court explained in *People v Vasquez*, 465 Mich 83, 89; 631 NW2d 711 (2001), the meaning of statutory language depends on context.

> "Contextual understanding of statutes is generally grounded in the doctrine of *noscitur a sociis*: '(i)t is known from its associates,' see Black's Law Dictionary (6th ed), at 1060. This doctrine stands for the principle that a word or phrase is given meaning by its context or setting." *Tyler v Livonia Public Schs*, 459 Mich 382, 390-391; 590 NW2d 560 (1999). "(I)n seeking meaning, words and clauses will not be divorced from those which precede and those which follow." *Sanchick v State Bd of Optometry*, 342 Mich 555, 559; 70 NW2d 757 (1955). "It is a familiar principle of statutory construction that words grouped in a list should be given related meaning." *Third Nat'l Bank in Nashville v Impc Ltd, Inc*, 432 US 312, 322; 97 S Ct 2307; 53 L Ed 2d 368 (1977). [*Id*.]

The exceptions listed in MCL 750.227(1) provide that a person may carry an otherwise prohibited weapon in "his or her dwelling house, place of business or on other land possessed by the person." Under the doctrine of *noscitur a sociis*, the phrases "dwelling house," "place of business," and "other land" must be given related meanings. *Vasquez*, *supra* at 89. Both "dwelling house" and "other land" refer to real property, so the phrase "place of business" must similarly be interpreted as referring to a fixed location on land. Thus, the *Wallin* Court did not err in finding the place of business exception inapplicable to work vehicles.

The evidence in the instant case establishes that the knife was found in the semi truck driven by defendant, so the place of business exception did not apply. Therefore, the prosecution presented sufficient evidence of each of the essential elements of CCW for the trier of fact to find defendant guilty beyond a reasonable doubt.

Affirmed.

/s/ Deborah A. Servitto
/s/ Michael J. Talbot
/s/ Bill Schuette